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IN THE
Supreme Court of the United States
OCTOBER TERM, 1944.

No. 239.

THE STATE OF NORTH DAKOTA,

Petitioner,

vs.

JOHN A. STANTON.

**RESPONDENT'S BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

F. E. McCURDY,
Attorney for Respondent,
Bismarck, North Dakota.



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STATEMENT OF FACTS

The Respondent accepts the Statement of Facts as set out in the brief of the Petitioner.

**RE-STATEMENT OF POINTS URGED BY THE
PETITIONER**

1. The Petitioner asks:

"May a farmer-debtor bankrupt redeem from a foreclosure sale certificate holder for a less amount than provided by law of state where foreclosure was made?"

We have omitted superfluous statement which assumes that such an Act would be depriving the certificate holder of his property without due process of law.

2. "Are not Congress and the Legislature of the State of North Dakota equally bound by a contract or compact existing between the Federal Government and the State of North Dakota, by reason of the grant of public lands for school purposes made by the Federal Government and the acceptance of such grant and its guaranty to protect and administer the funds arising from the sale of such lands as a trust fund."

ARGUMENT

On Point One, being on the right of the debtor to redeem for a less amount than that which the property was bid in by the holder of the mortgage under the provisions of 75 (s) of the Bankruptcy Act as amended.

We believe this question to have been answered once and for all by this Court in the case of

Wright vs. Union Central Life Ins. Co., 304 U. S. 502.

At page 514 of this case, the Court used this language which, we believe, is competent answer to the question involved and which is Point One, Subdivision "A".

"While there may be no relation of debtor and creditor between the bankrupt and the purchaser of his property at judicial sale, we think the purchaser at judicial sale does enter into the radius of the bankruptcy power of his debts. His purchase is in the liquidation of the indebtedness. The debtor has a right of redemption of which the purchaser is advised, and until that right of redemption expires, the rights of the purchaser are subject to the power of Congress over the relationship of debtor and creditor and its power to 'legislate' for the rehabilitation of the debtor."

"The person whose land has been sold at foreclosure sale and now holds the right of redemption is, for all practical purposes, in the same debt situation as an ordinary mortgagor in default; both are faced with the same ultimate prospects, either paying a certain sum of money or of being completely divested of their land."

"We think the provisions for the extension of the period of redemption comes clearly within the powers of the Congress under the bankruptcy clause" * * *.

"If the argument is that Congress has no power to alter property rights, because the regulations of rights in property is reserved to the states, it is futile" * * *.

"Property rights do not gain any absolute inviolability in the bankruptcy court because created and protected by state law." * * * "But if Congress, acting within its bankruptcy power, it may authorize the bankruptcy court to affect those property rights, provided the limitations of the due process clause are observed."

Also:

State of North Dakota vs. Szarkowski, 142 Fed. (2nd) 333.

State of North Dakota vs. Towner Co., 142 Fed. (2nd) 48.

Coming now to Point Two urged by the Petitioner which, as we see it, merely raises the question as to whether or not the Enabling Act, 25 Statute at Large, 762, and Article 9 of the Constitution of the State of North Dakota has any bearing whatsoever upon the question presented by Point One. The sentence which, we believe, the Petitioner had in mind is as follows, and is found in Article 9, the last sentence in Section 159 of the Constitution of the State of North Dakota and reads as follows:

"Every such fund shall be deemed a trust fund held by the state and the state shall make good all losses thereof."

We believe this clause has no bearing whatsoever upon the question under consideration for the following reasons:

1. There is no proof that the money was lost by an unwise investment.
2. There is a provision that the State shall make good all losses.

3. That very language contemplates that there will be losses.

4. There is no showing in this case that there is a loss or that one would ensue because of redemption and payment under the provisions of Section 75 (s) of the Bankruptcy Act as amended.

Counsel's argument, reduced to its lowest terms, merely means that if the State of North Dakota made a bad loan and lost money on it, that the State should be permitted, in violation of the Federal Bankruptcy Act as amended by Section 75 (s), to sell the land, carry it on its books at a valuation greater than its actual value and thus deceive not only taxpayers of the State of North Dakota but also deceive the United States of America, and thereby enabling the State to escape the liability to "make good" the loss thereof.

As the Respondent sees the situation, the money has already been lost, if there was a loss of principal on that loan, the school fund has been depleted to the extent of that loss, if any, on the bad loan. And the mere carrying of a piece of land on the books at a valuation greater than its real value cannot change the situation and no individual, much less the State, should be permitted to indulge in such juggling of figures to avoid a plain duty to "make good".

This case contains no elements or questions that could properly invoke the jurisdiction of the District Court and the decision of the Circuit Court of Appeals from the Eighth Circuit, we believe, to be final under a fair, reasonable interpretation of the rules and law relating to the decision of the Circuit Court of Appeals of the Eighth Circuit.

We respectfully submit the Petition should be denied.

Respectfully submitted,

F. E. McCURDY,
Attorney for Respondent,
Bismarck, North Dakota.

